

## LEGISLATIVE BILL 361

Approved by the Governor February 20, 1978

Introduced by Duis, 39

AN ACT to amend sections 81-885.01, 81-885.06, 81-885.07, 81-885.11 to 81-885.14, 81-885.21, 81-885.22, 81-885.24, and 81-885.34, Reissue Revised Statutes of Nebraska, 1943, and section 81-885.45, Revised Statutes Supplement, 1977, relating to real estate; to redefine a term; to specify the term of an appointed board member; to change certain licensing requirements; to change certain business procedures; and to repeal the original sections, and also sections 81-885.16 and 81-885.32, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 81-885.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.01. As used in sections 81-885.01 to 81-885.47, unless the context otherwise requires:

(1) Real estate shall mean and include condominiums and leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere;

(2) Broker shall mean any person who for a fee, commission, or any other valuable consideration, or with the intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, or lease or option for any real estate or improvements thereon, or assists in procuring prospects or holds himself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate or collects rents or attempts to collect rents, or holds himself out as engaged in any of the foregoing. Broker shall also include any person: (a) Employed by or on behalf of the owner or owners of lots or other parcels or real estate at a salary, fee, commission, or any other valuable consideration to sell such real estate or any part thereof in lots or parcels or make other disposition thereof; (b) who engages in the business of charging an

advance fee in connection with any contract whereby he undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both; (c) ~~who appraises, offers, attempts, or agrees to appraise real estate;~~ (d) who auctions, offers, attempts, or agrees to auction real estate; or (e) ~~(d)~~ who buys or offers to buy or sell or otherwise deals in options to buy real estate;

(3) Associate broker shall mean a person who has a broker's license and who is employed by another broker to participate in any activity described in subdivision (2) of this section;

(4) Salesman Salesperson shall mean any person, other than an associate broker, who is employed by a broker to participate in any activity described in subdivision (2) of this section, except as provided in subdivision (2) (c) of this section;

(5) Person shall mean and include individuals, corporations, and partnerships, except limited partnerships, foreign or domestic that when referring to a person licensed under this act, it shall mean an individual;

(6) Subdivision or subdivided land shall mean any real estate offered for sale and which has been registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 and following, 15 U.S.C. 1701 and following, as such act existed on January 1, 1973, or real estate located out of this state which is divided or proposed to be divided into twenty-five or more lots, parcels, or units;

(7) Subdivider shall mean any person who causes land to be subdivided into a subdivision for himself or others, or who undertakes to develop a subdivision, but shall not include a public agency or officer authorized by law to create subdivisions;

(8) Purchaser shall mean a person who acquires or attempts to acquire or succeeds to an interest in land; and

(9) Commission shall mean the State Real Estate Commission.

Sec. 2. That section 81-885.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.06. No action or suit shall be instituted, nor recovery be had, in any court of this state by any person for compensation for any act done or service rendered, the doing or rendering of which is prohibited under the provisions of sections 81-885.01 to 81-885.47, to other than licensed brokers, licensed associate brokers, or licensed salesmen salespersons. unless such person, partnership, or corporation was duly licensed under sections 81-885.01 to 81-885.47 as broker, associate broker, or salesman prior to the time of offering to perform any such act or service or procuring any promise to contract for the payment of compensation for any such contemplated act or service. A licensed broker may bring an action in the name of a partnership or corporation if the broker operates under either of such business organizations.

Sec. 3. That section 81-885.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.07. (1) There is hereby created the State Real Estate Commission which shall consist of the Secretary of State, who shall be chairman of the commission, and five six members appointed by the Governor. Four of the members of such commission, appointed by the Governor, shall be active and licensed real estate brokers who have engaged in the real estate business as brokers or associate brokers for not less than five years, which members shall be appointed by the Governor, one from each of the four congressional districts as the districts were constituted on January 1, 1961. The remaining member members shall be appointed at large, and one of whom shall be representative of the public and one of whom shall be a licensed real estate salesperson who has engaged in the real estate business as a salesperson for not less than three years.

(2) The present members of the commission shall continue to serve for the terms for which they were respectively appointed. Within thirty days after September 2, 1973, the Governor shall appoint the at-large member for a term of six years from September 2, 1973. Within thirty days after the effective date of this act, the Governor shall appoint the salesperson member for a term of six years from the effective date of this act. At the expiration of the term of any member of the commission, the Governor shall appoint a successor for a term of six years. Any appointed member shall be limited to one six-year term, in addition to any partial term served. In the event of a vacancy on the commission, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of

the member whose office has become vacant. In the absence of the chairman, the senior member of the commission in point of service present shall serve as presiding officer. Not less than four members of the commission must be present at any official meeting of the commission. The action of the majority of the members of the commission shall be deemed the action of the commission. No appointed person may act as a member of the commission while holding any other elective or appointive state or federal office.

(3) Each member of the commission shall receive as compensation for each day actually spent on his official duties at scheduled meetings the sum of fifty dollars and his actual and necessary expenses incurred in the performance of his official duties.

(4) The commission shall employ a director who shall keep a record of all the proceedings, transactions, communications, and official acts of the commission, be custodian of all the records of the commission, and perform such other duties as the commission may require. The director shall call a meeting of the commission at his discretion or upon the direction of the chairman or upon a written request of two or more members of the commission. The commission may employ such other employees as may be necessary to properly carry out the provisions of sections 81-885.01 to 81-885.47, fix the salaries of such employees, and make such other expenditures as are necessary to properly carry out the provisions of sections 81-885.01 to 81-885.47. The office of the commission shall be maintained in Lincoln and all files, records, and property of the commission shall remain therein. Neither the director nor any employee of the commission may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

(5) The commission may adopt rules and regulations relating to the administration of but not inconsistent with the provisions of sections 81-885.01 to 81-885.47.

(6) The commission may conduct or assist in conducting real estate institutes and seminars, and incur and pay the necessary expenses in connection therewith, which institutes or seminars shall be open to all licensees.

Sec. 4. That section 81-885.11, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.11. Any person, desiring to act as a real estate broker or real estate salesman salesperson, must file an application for a license with the commission. The application shall be in such form and detail as the commission shall prescribe, setting forth the following:

(1) The name and address of the applicant or the name under which he intends to conduct business and, if the applicant is conducts business as a partnership, the name and residence address of each member thereof and the name under which the partnership business is to be conducted, and, if the applicant is conducts business as a corporation, the name and address of each of its principal officers;

(2) The place or places, including the city or village with the street and street number, if any, where the business is to be conducted; and

(3) Such other information as the commission shall require.

Sec. 5. That section 81-885.12, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.12. (1) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of broker or salesman salesperson in such manner as to safeguard the interest of the public, and only after satisfactory proof of such qualifications has been presented to the commission. No license shall be granted to an applicant who conducts business as a corporation or partnership unless any stockholder or partner having a controlling interest therein, if any, bears a good reputation for honesty, trustworthiness, and integrity.

(2) When an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses, or has been convicted of a felony or a crime involving moral turpitude in any court of competent jurisdiction of this or any other state, district, or territory of the United States, or of a foreign country, such untrustworthiness of the applicant, and the conviction, may in itself be sufficient ground for refusal of a license, and the commission may in its discretion deny a license to any person who has engaged in the real estate business without a license.

(3) When an applicant has made a false statement of material fact on his application, such false statement may in itself be sufficient ground for refusal of a license.

(4) Grounds for suspension or revocation of a license, as provided for by sections 81-885.01 to 81-885.47, or the previous revocation of a real estate license shall also be grounds for refusal to grant a license.

Sec. 6. That section 81-885.13, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.13. (1) No broker's or salesman's salesperson's license shall be issued to any person who has not attained the age of nineteen years. No broker's or salesman's salesperson's license shall be issued to any person who is not a high school graduate or the holder of a certificate of high school equivalency.

(2) Each applicant for a salesperson's license shall furnish evidence that he has completed two courses in real estate subjects, approved by the commission, composed of not less than sixty class hours of study, or in lieu thereof, correspondence courses approved by the commission.

~~(2)~~ (3) Each applicant for a broker's license shall either (a) have first served actively for two years as a licensed salesman salesperson and shall furnish evidence of completion of sixty class hours in addition to the hours required by subsection (2) of this section in a course of study approved by the commission or in lieu thereof a correspondence course approved by the commission; provided, that until January 1, 1981, subdivision (a) of this subsection shall not apply to any person holding a salesman's salesperson's license on September-27, 1973 the effective date of this act, but who in place thereof shall have served actively for one year as a licensed real estate salesman salesperson, or (b) furnish a certificate that he has passed a course of at least fifteen eighteen credit hours in subjects related to real estate at an accredited university or college, or completed six courses in real estate subjects composed of not less than one hundred eighty class hours in a course of study approved by the commission or in lieu thereof, correspondence courses approved by the commission. The applicant for a license must pass a written examination covering generally the matters confronting real estate brokers and salesmen salespersons. Such examination may be taken before the commission or any person designated

by the commission. Failure to pass the examination shall be grounds for denial of a license without further hearing. The commission may prepare and distribute to licensees under sections 81-885.01 to 81-885.47 informational material deemed of assistance in the conduct of their business.

(4) Courses of study, referred to in subsections (2) and (3) of this section and subsection (1) of section 81-885.14, shall include courses offered by private proprietary real estate schools when such courses are prescribed by the commission and are taught by instructors approved by the commission. The commission shall monitor schools offering approved real estate courses and for good cause shall have authority to suspend or withdraw approval of such courses or instructors.

Sec. 7. That section 81-885.14, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.14. (1) To pay the expense of the maintenance and operation of the office of the commission and the enforcement of sections 81-885.01 to 81-885.47, it shall at the time an application is submitted collect from an applicant for each broker's or salesman's salesperson's examination a fee of twenty-five dollars and an investigation fee of twenty-five dollars. If the applicant fails to pass the original examination, the applicant may take the examination one more time within a year for a fee of five dollars. If the applicant fails the second examination, then the third and all subsequent examinations may be taken upon the payment of twenty-five dollars for each examination. Prior to the issuance of an original license, each applicant who has passed the examination, as required by section 81-885.13, shall pay a license fee in advance as follows: For a broker's license, thirty dollars for a resident and sixty dollars for a nonresident, and for a salesman's salesperson's license, fifteen dollars for a resident and thirty dollars for a nonresident. After the original issuance of a license, a renewal application and an annual fee of thirty dollars for each broker and fifteen dollars for each salesman salesperson shall be due and payable on or before the last day of November of each year. Failure to remit annual fees when due shall automatically cancel such license on December 31 of that year, but otherwise the license shall remain in full force and effect continuously from the date of issuance, unless suspended or revoked by the commission for just cause. Any licensee who fails to file an application for the renewal of any license and pay the renewal fee as provided in

this section, may file a late renewal application and shall pay, in addition to the renewal fee, the sum of ten dollars for each month or fraction thereof beginning with the first day of December; Provided, that such late application is filed before July 1 of the ensuing year. Any check presented to the commission as a fee for either an original or renewal license or for examination for license, which is returned to the State Treasurer unpaid, shall be cause for revocation or denial of license. ~~The license of a real estate salesman, except those licensed on September 27, 1973, shall not be renewed~~ A salesperson who received an original license after September 2, 1973, and prior to the effective date of this act, shall not receive a renewed license on January 1 following the second anniversary of its original issuance date unless the ~~salesman~~ salesperson shall furnish evidence of completion of thirty class hours in a course of study approved by the commission or in lieu thereof, a correspondence course approved by the commission.

(2) Any real estate ~~salesman~~ salesperson who is temporarily unemployed or without an employing broker may renew his license by making application therefor before December 1 prior to the ensuing year by submitting the renewal fee together with the completed renewal application on which he has noted his present inactive status. Any ~~salesman~~ salesperson whose license has been renewed on such inactive status shall not be permitted to engage in the real estate business until such time as he shall secure a new employing broker. On or after January 1, 1977, any license which has been inactive for a continuous period of more than three years shall be reinstated only if the licensee has met the examination requirement of an original applicant.

Sec. 8. That section 81-885.21, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.21. (1) Each broker shall maintain a separate bank checking account in this state in his name or the name under which he does business, which shall be designated a trust account in which all downpayments, earnest money deposits, or other trust funds received by him, his associate brokers, or his ~~salesman~~ salesperson on behalf of his principal or any other person shall be deposited and remain until the transaction is closed or otherwise terminated unless all parties having an interest in the funds have agreed otherwise in writing.

(2) Each broker shall notify the commission of the name of the bank or banks in which the trust account is maintained and also the name of the account on forms

provided therefor.

(3) Each broker shall authorize the commission to examine such trust account by a duly authorized representative of the commission. Such examination shall be made annually or at such time as the commission may direct.

(4) A broker may maintain more than one trust account in his name or the name under which he does business if the commission is advised of such account as required in subsection (2) of this section.

(5) In the event a branch office maintains a separate trust account, a separate bookkeeping system shall be maintained in the branch office.

(6) A broker shall not be entitled to any part of the earnest money or other money paid to him or the entity under which he does business in connection with any real estate transaction as part or all of his commission or fee until the transaction has been consummated or terminated.

Sec. 9. That section 81-885.22, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.22. Whenever it shall appear to the commission from any examination or report provided by the laws of this state that a broker has failed to comply with the provisions of section 81-885.21, or if a broker, ~~or the officers of any corporation licensed as a real-estate broker,~~ shall refuse to submit his books, papers, and affairs to the inspection of any examiner, the commission shall have reason to conclude that the trust account of such broker is in an unsafe or unsound condition and the commission shall forthwith submit a complete report to the Attorney General of all information available to it. An action may be brought by the State of Nebraska to enjoin such broker from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or as much thereof as the court may deem reasonably necessary to prevent violations of the law or injury to the public

through or by means of the use of such property and business. Such receiver, when so appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall, from time to time, be conferred upon him by the court.

Sec. 10. That section 81-885.24, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.24. The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any broker, associate broker, ~~salesman~~ salesperson, or subdivider and shall have power to censure the licensee or certificate holder or to revoke or suspend any license or certificate, issued under sections 81-885.01 to 81-885.47 whenever the license or certificate has been obtained by false or fraudulent representation or the licensee or certificate holder has been found guilty of any of the following unfair trade practices:

(1) Refusing because of race, color, national origin, or ethnic group to show, sell, or rent any real estate for sale or rent to prospective purchasers or renters;

(2) Intentionally using advertising which is misleading or inaccurate in any material particular or in any way misrepresents any property, terms, values, policies, or services of the business conducted;

(3) Failing to account for and remit any money coming into his possession belonging to others;

(4) Commingling the money or other property of his principals with his own;

(5) Failing to maintain and deposit in a separate noninterest-bearing checking account all money received by a broker acting in such capacity, or as escrow agent, or the temporary custodian of the funds of others, in a real estate transaction unless all parties having an interest in the funds have agreed otherwise in writing;

(6) Accepting, giving, or charging any undisclosed commission, rebate, or direct profit on expenditures made for a principal;

(7) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge and consent of the employer;

(8) Accepting a commission or other valuable consideration by an associate broker or salesman salesperson from anyone other than his employing broker without the consent of his employing broker;

(9) Acting in the dual capacity of agent and undisclosed principal in any transaction;

(10) Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property;

(11) Placing a sign on any property offering it for sale or rent without the written consent of the owner or his authorized agent;

(12) Offering real estate for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent;

(13) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;

(14) Negotiating a sale, exchange, listing, or lease of real estate directly with an owner or lessor if he knows that such owner has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker, or negotiating directly with an owner to withdraw from or break such a listing contract for the purpose of substituting, in lieu thereof, a new listing contract granting an exclusive agency or an exclusive right to sell to himself or his employing broker;

(15) Accepting employment or compensation for appraising real estate contingent upon the reporting of a predetermined value or issuing an appraisal report on real estate in which he has an undisclosed interest;

(16) Soliciting, selling, or offering for sale real estate by offering free lots or conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real estate;

(17) Paying a commission or compensation to any person for performing the services of a broker, associate broker, or salesman salesperson who has not first secured his license under sections 81-885.01 to 81-885.47 or is a nonresident who is licensed in his state of residence;

(18) Failing to include a fixed date of expiration in any written listing agreement and failing to leave a copy of the agreement with the principal;

(19) Failing to deliver within a reasonable time a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller;

(20) Failing by a broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete, detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller, failing to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same was disbursed, and failing to retain true copies of such statements in his files;

(21) Making any substantial misrepresentations;

(22) Acting for more than one party in a transaction without the knowledge of all parties for whom he acts;

(23) Failing by an associate broker or salesman salesperson to place, as soon after receipt as practicable, in the custody of his employing broker any deposit money or other money or funds entrusted to him by any person dealing with him as the representative of his licensed broker;

(24) Filing a listing contract or any document or instrument purporting to create a lien based on a listing contract for the purpose of casting a cloud upon the title to real estate when no valid claim under the listing contract exists;

(25) Violating any rule or regulation promulgated by the commission in the interest of the public and consistent with the provisions of sections 81-885.01 to 81-885.47;

(26) Failing by a subdivider, after the original certificate has been issued, to comply with all of the requirements of sections 81-885.01 to 81-885.47;

(27) The broker or salesman salesperson has been convicted of a felony or entered a plea of guilty or nolo contendere to a felony charge; or

(28) Demonstrating unworthiness or incompetency to act as a broker, associate broker, or salesman

salesperson, whether of the same or of a different character as hereinbefore specified.

Sec. 11. That section 81-885.34, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.34. Prior to the time when such subdivision real estate is offered for sale, such person, partnership, or corporation shall make application for a subdivision certificate to the commission in writing on a form to be prescribed by the commission and approved by the Attorney General. Such application shall be accompanied by a filing fee of one hundred dollars plus twenty-five dollars for each one hundred lots or fraction thereof to be offered for sale. Such application shall contain the following information and supporting documents:

(1) The name and address of the applicant and whether the applicant is a person, partnership, or corporation;

(2) If the applicant is a partnership, the names and addresses of the individual members thereof;

(3) If the applicant is a corporation, the place of incorporation and the names and addresses of its officers and members of its board of directors;

(4) The legal description and area of the real estate to be offered for sale, including maps and recorded plats thereof showing the area involved;

(5) The name and address of the legal owner of the real estate to be offered for sale;

(6) A certified, audited financial statement fully and fairly disclosing the current financial condition of the developer;

(7) A statement of the condition of the title of the subdivided lands including encumbrances as of a specified date within thirty days of the application;

(8) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrances upon the title and copies of the instruments creating the lien or encumbrances, if any, with dates as to recording, along with the documentary evidence that any mortgagee or trustee of a deed of trust has subordinated his interest in the real estate to the interest of a purchaser of the

real estate;

(9) A true statement of the terms and conditions on which it is intended to dispose of the real estate, together with copies of any contracts intended to be used, which contracts shall contain ~~a provision~~ the following provisions: (a) A provision entitling the purchaser, if he has not seen the land, to an unconditional right of refund of all payments made under the contract after inspecting the land if inspection is made within a time provided in the contract which shall not be less than four months from the date of the contract and a provision granting to the purchaser an unconditional right to rescind the contract for a period of fourteen days if he has not inspected the land; and (b) if the land is located outside of this state, a provision to limit the right of recovery by the subdivider or his assignee to the remedy of foreclosure without a deficiency judgment against the purchaser;

(10) A statement of the zoning and other governmental regulations affecting the use of the land to be sold or offered for sale disclosing whether or not such regulations have been satisfied; and

(11) A copy of an offering statement which sets forth the material facts with respect to the land to be offered or sold.

After receiving the application, the commission may require such additional information concerning the real estate as it deems necessary.

Sec. 12. That section 81-885.45, Revised Statutes Supplement, 1977, be amended to read as follows:

81-885.45. Any person, ~~partnership, corporation,~~ or subdivider acting as a broker, ~~salesman salesperson,~~ or subdivider without having first obtained the required license, shall be guilty of a Class II misdemeanor.

Sec. 13. The terms employ, employed, employer, or employee as used in sections 81-885.01 to 81-885.03 and 81-885.05 to 81-885.47, shall not necessarily be construed to imply an employer and employee relationship. The use of such terms shall not prohibit the establishment of any independent contract or other relationship between a business and an individual, between individuals, or between businesses, including an employer and employee relationship.

Sec. 14. That original sections 81-885.01, 81-885.06, 81-885.07, 81-885.11 to 81-885.14, 81-885.21,

81-885.22, 81-885.24, and 81-885.34, Reissue Revised Statutes of Nebraska, 1943, and section 81-885.45, Revised Statutes Supplement, 1977, and also sections 81-885.16 and 81-885.32, Reissue Revised Statutes of Nebraska, 1943, are repealed.